IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.4473 OF 2006

Siddeshwar Sahakari Sakhar
Karkhana Ltd, Kumthe, .. Petitioner
Vs
Shri Firoz Hamid Pathan & ors .. Respondents.

Mr V.B.Rajure, for the petitioner.

CORAM : D.B.BHOSALE,J.
DATE : 28.08.2006

PC:

1. Heard the learned counsel for the petitioner.

2. This petition is directed against the order dated 24.3.2006 by which the application at Exhibit-54 filed by the respondent no.1-plaintiff under Order 6 rule 17 of the Code of Civil Procedure has been allowed. Mr Rajure, learned counsel for the petitioner, submitted that by amending the plaint the plaintiff has introduced a new case and has withdrawn the admissions given earlier in the plaint in favour of the petitioner-defendant. Mr Rajure, in support of his submissions, placed reliance upon the judgment of the Supreme Court in M/s Modi Spinning and Weaving Mills Co Ltd and anr Vs. M/s Ladha Ram and Co, AIR 1977 Supreme Court 680. It is true that by way of amendment a party to the proceedings cannot be allowed to withdraw the admissions given in favour of the opposite party. However, in the present case at this stage I do not deem

it necessary to examine in writ jurisdiction under Article 227of the Constitution of India that whether the amendment allowed by the impugned order amounts to withdrawal of the admissions given in favour of the petitioner-defendant, though I have my own doubt about the same. The order impugned being an inter-locutory in character, it is always open to the petitioner to raise all such contentions and rely upon the judgment in the further proceedings after disposal of the suit. I am satisfied that at this stage no prejudice would be caused to the petitioner if the merits of the contentions are not examined at this stage. In the circumstances, this writ petition is dismissed with liberty to the petitioner to challenge the order impugned in the present writ petition in appeal/cross-objection as the case may be after disposal of the suit.

(D.B.BHOSALE,J.)